



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

Mr. James R. Raup
McGinnis, Lochridge & Kilgore
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR94-615

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26959.

The Austin Independent School District (the "school district"), which you represent, has received a request for information relating to a certain sexual harassment complaint. Specifically, the requestor seeks copies of all records relating to the matter. You have submitted to us for review a student's handwritten letter and claim that sections 552.101 and 552.114 of the Government Code except it from required public disclosure.¹

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.114 excepts "information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 incorporates the requirements of the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, into the act. Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally

¹We assume that no other records in the school district's possession are responsive to this request. If there are, then the school district must release them to the requestor, unless prohibited by law from doing so.

identifiable information contained therein . . .) of students without the written consent of their parents to any individual, agency, or organization

20 U.S.C. § 1232g(b)(1). "Education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987) at 14-15; 447 (1986).² Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978). Release of a student's handwritten comments, even if unsigned, is prohibited under FERPA and section 552.114 because it would make the student's identity easily traceable. Open Records Decision No. 224 (1979).

We have examined the document submitted to us for review. We conclude that it is governed by FERPA and that its release would make the student's identity easily traceable. Accordingly, we conclude that the submitted document may be released only as FERPA provides.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

²The phrase "student record" in section 552.114 has generally been construed to be the equivalent of "education records." Thus, our resolution of the availability of this information under FERPA in this instance also resolves the applicability of section 552.114 to the requested information. *See generally* Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

Enclosures: Submitted document

Ref.: ID# 26959

cc: Mr. William Bacon
10103 Oak Hollow
Austin, Texas 78758
(w/o enclosures)